

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CONNIE G. ENGLE, )  
Plaintiff, ) No. CV-07-0142-JPH  
v. ) ORDER GRANTING DEFENDANT'S  
MICHAEL J. ASTRUE, ) MOTION FOR SUMMARY JUDGMENT  
Commissioner of Social )  
Security, )  
Defendant. )

BEFORE THE COURT are cross-motions for summary judgment, noted for hearing without oral argument on January 14, 2008. (Ct. Rec. 14). Plaintiff Connie G. Engle did not file a reply brief in the case. Attorney Jeffrey Schwab represents Plaintiff; Special Assistant United States Attorney David M. Blume represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 17). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 22) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 19).

## **JURISDICTION**

On June 24, 2003, Plaintiff protectively filed an application for Supplemental Security Income ("SSI") benefits, alleging disability since April 1, 1989, due to chronic depression, anxiety, a heart stent, asthma, and three herniated discs. Tr.

1 73. After the application was denied initially and on  
2 reconsideration, Plaintiff requested a hearing before an  
3 Administrative Law Judge ("ALJ"). Tr. 37-38, 43-46, 49-51. On  
4 June 26, 2006, an ALJ held a hearing and took testimony from  
5 Plaintiff, represented by counsel, and a vocational expert ("VE"),  
6 Jill Dempsey. Tr. 779-829. On November 21, 2006, the ALJ issued  
7 a decision finding that Plaintiff was not disabled because she  
8 could work as an assembler (light, unskilled) or a final assembler  
9 (sedentary, unskilled). Tr. 30. The Appeals Council denied a  
10 request for review on April 10, 2007. Tr. 8-11. Therefore, the  
11 ALJ's decision became the final decision of the Commissioner,  
12 which is appealable to the district court pursuant to 42 U.S.C.  
13 405(g). Plaintiff timely filed this action for judicial review on  
14 May 8, 2007. The relevant period under review is from June 2003  
15 (the month Plaintiff filed her SSI application) to November 21,  
16 2006 (date of the ALJ's decision). 20 C.F.R. § 416.330; Social  
17 Security Ruling ("SSR") 83-20.

18 **STATEMENT OF FACTS**

19 The facts have been presented in the administrative hearing  
20 transcript, the ALJ's decision, and the parties' briefs and will  
21 only be summarized here. Plaintiff was born in 1962. Tr. 90.  
22 She was 41 years old when she filed the instant application in  
23 June 2003 and was 44 years old when the ALJ issued her decision in  
24 November 2006. Plaintiff completed the 8<sup>th</sup> grade, obtained a GED  
25 in 1996, and attended some college. Tr. 784, 126. She had past  
work experience as a home attendant and nurse's aid. Tr. 119,  
147. She last worked as a home attendant in April 2004. Tr. 785.  
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## **SEQUENTIAL EVALUATION PROCESS**

2        The Social Security Act (the "Act") defines "disability" as  
3    the "inability to engage in any substantial gainful activity by  
4    reason of any medically determinable physical or mental impairment  
5    which can be expected to result in death or which has lasted or  
6    can be expected to last for a continuous period of not less than  
7    twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The  
8    Act also provides that a Plaintiff shall be determined to be under  
9    a disability only if any impairments are of such severity that a  
10   Plaintiff is not only unable to do previous work but cannot,  
11   considering Plaintiff's age, education and work experiences,  
12   engage in any other substantial gainful work which exists in the  
13   national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
14   Thus, the definition of disability consists of both medical and  
15   vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
16   (9<sup>th</sup> Cir. 2001).

17 The Commissioner has established a five-step sequential  
18 evaluation process for determining whether a person is disabled.  
19 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
20 is engaged in substantial gainful activities. If so, benefits are  
21 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If  
22 not, the decision maker proceeds to step two, which determines  
23 whether Plaintiff has a medically severe impairment or combination  
24 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),  
25 416.920(a)(4)(ii).

26 If Plaintiff does not have a severe impairment or combination  
27 of impairments, the disability claim is denied. If the impairment  
28 is severe, the evaluation proceeds to the third step, which

1 compares Plaintiff's impairment with a number of listed  
2 impairments acknowledged by the Commissioner to be so severe as to  
3 preclude substantial gainful activity. 20 C.F.R. §§  
4 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
5 App. 1. If the impairment meets or equals one of the listed  
6 impairments, Plaintiff is conclusively presumed to be disabled.  
7 If the impairment is not one conclusively presumed to be  
8 disabling, the evaluation proceeds to the fourth step, which  
9 determines whether the impairment prevents Plaintiff from  
10 performing work which was performed in the past. If a Plaintiff  
11 is able to perform previous work, that Plaintiff is deemed not  
12 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
13 At this step, Plaintiff's residual functional capacity ("RFC")  
14 assessment is considered. If Plaintiff cannot perform this work,  
15 the fifth and final step in the process determines whether  
16 Plaintiff is able to perform other work in the national economy in  
17 view of Plaintiff's residual functional capacity, age, education  
18 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
19 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

20 The initial burden of proof rests upon Plaintiff to establish  
21 a *prima facie* case of entitlement to disability benefits.

22 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
23 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
24 met once Plaintiff establishes that a physical or mental  
25 impairment prevents the performance of previous work. The burden  
26 then shifts, at step five, to the Commissioner to show that (1)  
27 Plaintiff can perform other substantial gainful activity and (2) a  
28 "significant number of jobs exist in the national economy" which

1 Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
 2 Cir. 1984).

3 STANDARD OF REVIEW

4 Congress has provided a limited scope of judicial review of a  
 5 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold  
 6 the Commissioner's decision, made through an ALJ, when the  
 7 determination is not based on legal error and is supported by  
 8 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995  
 9 (9<sup>th</sup> Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir.  
 10 1999). "The [Commissioner's] determination that a plaintiff is  
 11 not disabled will be upheld if the findings of fact are supported  
 12 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572  
 13 (9<sup>th</sup> Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence  
 14 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d  
 15 1112, 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
 16 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
 17 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
 18 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
 19 evidence as a reasonable mind might accept as adequate to support  
 20 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
 21 (citations omitted). "[S]uch inferences and conclusions as the  
 22 [Commissioner] may reasonably draw from the evidence" will also be  
 23 upheld. *Mark v. Celebrenze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965).  
 24 On review, the court considers the record as a whole, not just the  
 25 evidence supporting the decision of the Commissioner. *Weetman v.*  
 26 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989) (quoting *Kornock v.*  
 27 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

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1 It is the role of the trier of fact, not this court, to  
2 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
3 evidence supports more than one rational interpretation, the court  
4 may not substitute its judgment for that of the Commissioner.  
5 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
6 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by  
7 substantial evidence will still be set aside if the proper legal  
8 standards were not applied in weighing the evidence and making the  
9 decision. *Brawner v. Secretary of Health and Human Services*, 839  
10 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). Thus, if there is substantial  
11 evidence to support the administrative findings, or if there is  
12 conflicting evidence that will support a finding of either  
13 disability or nondisability, the finding of the Commissioner is  
14 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir.  
15 1987).

## DAA ANALYSIS

17        An otherwise disabled individual is not entitled to  
18 disability benefits under the Act if drug addiction or alcoholism  
19 ("DAA") is a contributing factor material to disability. The  
20 Contract With America Advancement Act of 1996, Pub. L. No. 104-121  
21 § 105(a)9C), amended the definition of disability under the Act to  
22 prohibit entitlement to disability benefits under Titles II and  
23 XVI for any individual whose disability is based on DAA. Title II  
24 of the Act now states: "An individual shall not be considered to  
25 be disabled for purposes of this title if alcoholism or drug  
26 addiction would (but for this subparagraph) be a contributing  
27 factor material to the Commissioner's determination that the  
28 individual is disabled." 42 U.S.C. § 423(d)(2)(c). Title XVI of

1 the Act contains a similarly worded provision for purposes of  
2 determining eligibility for SSI disability benefits. 42 U.S.C. §  
3 1382c(a)(30)(J).

4 The Commissioner's disability regulations likewise state, "if  
5 we find that you are disabled and have medical evidence of your  
6 drug addiction or alcoholism, we must determine whether your drug  
7 addiction or alcoholism is a contributing factor material to the  
8 determination of disability." 20 C.F.R. § 416.935(a).

9 Specifically, the "key factor" the Commissioner "will examine in  
10 determining whether drug addiction or alcoholism is a contributing  
11 factor material to the determination of disability is whether we  
12 would still find you disabled if you stopped using drugs or  
13 alcohol." *Id.* at § 416.935(b). "If we determine that your  
14 remaining limitations would not be disabling, we will find that  
15 your drug addiction or alcoholism is a contributing factor  
16 material to the determination of disability." *Id.*

17 If the ALJ finds the claimant disabled and there is medical  
18 evidence of DAA, the ALJ must determine the materiality of the  
19 claimant's DAA to his disability. The ALJ must perform the  
20 sequential evaluation process a second time, separating out the  
21 impact of the claimant's DAA, to determine if she would still be  
22 found disabled if she stopped using drugs or alcohol. *Bustamante*  
23 v. *Massanari*, 262 F.3d 949, 955 (9<sup>th</sup> Cir. 2001). The claimant  
24 bears the burden of proving that DAA is not a contributing factor  
25 material to her disability. *Parra v. Astrue*, 481 F.3d 742, 744-  
26 45, 748 (9<sup>th</sup> Cir. 2007), petition for cert filed, 76 U.S.L.W. 3169  
27 (U.S. Sept. 21, 2007) (No. 07-408).

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## **ALJ'S FINDINGS**

The ALJ found at step one that Plaintiff has not engaged in substantial gainful activity since June 2003, the relevant time at issue (20 C.F.R. §§ 416.920(b) and 416.971 et. seq.). Tr. 20-21.

5 At step two, the ALJ determined that Plaintiff has severe  
6 impairments of depression, anxiety-related disorders, personality  
7 disorder, substance addiction disorder, degenerative disc disease,  
8 coronary artery disease, and asthma (20 C.F.R. § 416.920(c)), but  
9 found at step three that she does not have an impairment or  
10 combination of impairments listed in or medically equal to one of  
11 the Listings impairments. Tr 21. The ALJ specifically found that  
12 the evidence of record did not support a finding that hepatitis C  
13 and hypertension were severe impairments. Tr. 21-22.

14 The ALJ concluded and found, based on all the impairments  
15 including the substance abuse disorder(s), that Plaintiff has the  
16 RFC to perform light work activity. Tr. 22. The ALJ found that  
17 Plaintiff could lift and carry 20 pounds occasionally and 10  
18 pounds frequently, sit six hours out of an eight hour workday and  
19 stand and/or walk about six hours in an eight-hour workday. The  
20 ALJ also found Plaintiff able to occasionally climb, stoop, and  
21 crouch, but indicated Plaintiff should avoid more than moderate  
22 exposure to dust, fumes, odors and airborne particles, and  
23 unprotected heights and hazards. Tr.22. She could do simple  
24 repetitive tasks and should have no more than superficial  
25 interaction with the public. Tr. 22, 27.

26 The ALJ found that Plaintiff has several physical impairments  
27 that would limit her work to light physical exertion. In  
28 September 2002, she had a stent put in her coronary artery after

1 experiencing chest pain. Since the implant of the stent, nuclear  
2 stress tests have been normal and Plaintiff has been able to  
3 control her chest pain with medication and occasional  
4 nitroglycerin. An EKG in November 2005 was normal and her doctor  
5 opined that her heart problems were clinically stable. Tr. 22.

6 Additionally, the ALJ found that although the Plaintiff's  
7 back impairment is relatively mild, with degenerative disc disease  
8 of the lumbar spine, she had repeatedly reported that she had  
9 herniated discs. Tr. 22. Nerve conduction studies and MRI exams  
10 did not reveal the existence of any herniation. Tr.22.

11 As part of the analysis in finding that the Plaintiff has the  
12 RFC to perform light work, the ALJ made extensive findings  
13 concerning the Plaintiff's history of polysubstance abuse and drug  
14 seeking behavior. Tr.23. Notably, for the relevant period from  
15 June, 2003 to the date of hearing, November, 2006, the ALJ found  
16 that Plaintiff had a positive drug screen in August, 2003 for  
17 opiates, marijuana, and Hydrocone, and in November, 2003 it was  
18 found that she was using Oxycontin intravenously so her pain  
19 contract was terminated and she was offered drug treatment. In  
20 June, 2004, it was noted that Plaintiff's pupils were not reactive  
21 to light and in July, 2004 she was seen to discuss her narcotic  
22 drug use. At that time it was noted that she had multiple tracks  
23 on her arm and a left forearm abscess. In-patient drug treatment  
24 was recommended. Tr. 23. At hearing, Plaintiff acknowledged that  
25 she had been an intravenous user of Oxycontin for a two year  
26 period ending in September 2004 and had smoked marijuana up until  
27 six months before the hearing. Tr. 787.

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1       The ALJ also made extensive findings concerning Plaintiff's  
2 history of mental impairments. Tr. 23-24. Plaintiff had a mental  
3 exam in October, 2002 by Thomas McKnight, Ph.D., who noted  
4 Plaintiff had been receiving treatment from Grant County Mental  
5 Health for dysthymia (a mood disorder) and post traumatic stress  
6 disorder ("PTSD"). Dr. McKnight did not find objective evidence  
7 of PTSD and found her mental status examination to be within  
8 normal limits. She had no problem with cognitive functioning.  
9 He diagnosed cannabis dependence, probable alcohol abuse, PTSD by  
10 history (well controlled) and a Global Assessment of Functioning  
11 ("GAF") score indicating no more than slight impairment in social,  
12 occupational or school functioning. He opined that there was no  
13 reason why the Plaintiff could not maintain employment, but noted  
14 her marijuana, alcohol and prescription drug use was a problem.  
15 Tr. 23.

16       Plaintiff next had a psychological examination done in  
17 January, 2004 by John Gilbert, Ph.D. Plaintiff told Dr. Gilbert  
18 that she had stopped using marijuana in 2001 and had no other drug  
19 use. The ALJ found this statement to be contrary to Plaintiff's  
20 medical history that shows she continued marijuana use up to 2006  
21 and was an intravenous user of Oxycontin in November 1993. Tr.  
22 594. She also told Dr. Gilbert that she had stopped taking  
23 antidepressants when the record shows that she was still taking  
24 Effexor and Librium. Tr. 24. Dr. Gilbert noted that the claimant  
25 appeared to be quite pain and disability focused. Dr. Gilbert was  
26 not aware of and did not diagnose any substance abuse disorder in  
27 Plaintiff, although he examined her just a few months after it was  
28 learned that she was using Oxycontin intravenously. Tr. 24.

1 Plaintiff had another psychological exam performed in August  
2 2004 by Mahlon Dalley, Ph.D., who found she exaggerated her  
3 medical problems, and had no psychological disability that would  
4 prevent her from performing work activity. Dr. Dalley noted that  
5 the Plaintiff's long addiction to Librium was likely the cause of  
6 her depression and anxiety. Tr. 24.

7 The ALJ found that the Plaintiff is unable to perform any of  
8 her past work as a home attendant because she would not be able to  
9 tolerate the full range of medium exertion. At the hearing, the  
10 VE testified that the Plaintiff, with the RFC as determined, would  
11 be unable to return to any of her past relevant work. The ALJ  
12 found that testimony credible and consistent with the evidence.  
13 Tr. 25.

14 The ALJ found that the Plaintiff was born on April 13, 1962  
15 and was 41 years old on the date the application was filed, which  
16 is defined as a younger individual age 18-44 (20 C.F.R. §  
17 416.963). Tr. 25.

18 The ALJ found that the Plaintiff has at least a high school  
19 education and is able to communicate in English (20 C.F.R. §  
20 416.964). Tr. 26.

21 The ALJ found that the Plaintiff's acquired job skills do not  
22 transfer to other occupations within the residual functional  
23 capacity as defined (20 C.F.R. § 416.968). Tr. 26.

24 The ALJ found that considering the Plaintiff's age,  
25 education, work experience, and residual functioning capacity  
26 based on all of the impairments, including the substance use  
27 disorder(s), there are no jobs that exist in significant numbers  
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1 in the national economy that the Plaintiff can perform (20 C.F.R.  
2 §§ 416.960(c) and 416.966). Tr. 26.

3 The ALJ then applied the DAA Analysis and made the following  
4 findings:

5 1. If the Plaintiff stopped the substance use, the remaining  
6 limitations would cause more than a minimal impact on the  
7 Plaintiff's ability to perform basic work activities; therefore,  
8 the Plaintiff would continue to have a severe impairment or  
9 combination of impairments. Tr. 27.

10 2. If the Plaintiff stopped the substance use, the Plaintiff  
11 would not have an impairment or combination of impairments that  
12 meets or medically equals any of the impairments listed in 20 CFR  
13 Part 404, Subpart P, Appendix 1 (20 C.F.R. § 416.920(d)). Tr. 27.

14 3. If the Plaintiff stopped the substance use, the Plaintiff  
15 would have the residual functional capacity to perform light work,  
16 which involves occasional lifting less than 20 pounds, frequent  
17 lifting or carrying of 10 pounds, sitting for 2 hours and  
18 standing/walking for 6 hours in an 8 hour workday and having good  
19 use of the arms and hands for repetitive grasping, holding and  
20 turning objects (i.e., gross manipulation). The Plaintiff can  
21 occasionally climb, stoop, and crouch, and she should avoid  
22 exposure to dust, fumes, odors, airborne particles, and  
23 unprotected heights and hazards. She can do simple repetitive  
24 tasks, but should have no more than superficial interaction with  
25 the public. Tr. 27.

26 4. If the Plaintiff stopped the substance use, the Plaintiff  
27 would continue to be unable to perform past relevant work. Tr.  
28 29.

1       5. Transferability of job skills is not material to the  
2 determination of disability because using the Medical-Vocational  
3 Rules as a framework supports a finding that the Plaintiff is "not  
4 disabled", whether or not the Plaintiff has transferable job  
5 skills (See SSR 82-41 and 20 C.F.R. § 404 Subpt. P App. 2). Tr.  
6 30.

7       6. If the Plaintiff stopped the substance use, considering  
8 the Plaintiff's age, education, work experience, and residual  
9 functional capacity, there would be a significant number of jobs  
10 in the national economy that the Plaintiff could perform (20  
11 C.F.R. §§ 416.960(c) and 416.966). Tr. 30.

12       7. Because the Plaintiff would not be disabled if she stopped  
13 the substance use (20 C.F.R. § 416.920(g)), the Plaintiff's  
14 substance use disorder(s) is a contributing factor material to the  
15 determination of disability (20 C.F.R. § 416.935). Thus, the  
16 Plaintiff has not been disabled within the meaning of the Act at  
17 any time from the day the application was filed through the date  
18 of this decision. Tr. 30.

19 The ALJ concluded that the Plaintiff is not disabled under §  
20 1614(a)(3)(A) of the Act. Tr. 31.

## ISSUES

22 Plaintiff contends that the Secretary's decision is not  
23 supported by substantial evidence nor was the proper legal  
24 standard applied, specifically that:

25 1. The ALJ's decision that Plaintiff's substance abuse  
26 disorder(s) is a contributing factor material to the determination  
27 of disability is legal error and is not supported by substantial  
28 evidence.

1       2. The ALJ's decision that the Plaintiff is capable of light  
2 physical exertion is legal error and is not supported by  
3 substantial evidence.

## **ANALYSIS**

## 5 | A. Attention and Concentration

6 Plaintiff first argues that the ALJ erred by failing to  
7 account for her limitations on attention and concentration, in the  
8 absence of DAA. Plaintiff's Memo. at 8.

9       Residual functional capacity is the most a claimant can do  
10 considering her impairments and limitations. SSR 96-8p, available  
11 at 1996 WL 374184. An ALJ must consider the record as a whole and  
12 explain how she weighs the medical evidence and testimony when  
13 determining a claimant's functional capacity. 20 C.F.R. §  
14 416.946; SSR 96-5p, available at 1996 WL 374183. An ALJ's  
15 decision is based on the record as a whole; no doctor's opinion or  
16 testimony is conclusive on the issue of residual functional  
17 capacity. *Id.* The ALJ's determination should be affirmed if the  
18 proper legal standard was applied and it is supported by  
19 substantial evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217  
20 (9<sup>th</sup> Cir. 2005). Furthermore, the Court must uphold the denial of  
21 benefits if the evidence is susceptible to more than one rational  
22 interpretation, one of which supports the ALJ's decision. *Burch*  
23 *v. Barnhart*, 400 F.3d 676, 679 (9<sup>th</sup> Cir. 2005).

24 The ALJ found the Plaintiff could do simple repetitive tasks  
25 and have no more than superficial interaction with the public.  
26 Tr. 22, 27. Plaintiff asserts the opinions of Drs. Underwood and  
27 Brown, the State agency doctors, or Drs. Gilbert and Dalley,  
28 Plaintiff's examining doctors, were not fully considered in that

1 they found Plaintiff had moderate limitations in concentration,  
 2 persistence, or pace and moderate difficulty with social,  
 3 occupational, or school functioning. Plaintiff's Memo. at 9-10.

4 Plaintiff uses Dr. Brown and Underwood's notations on a  
 5 Psychiatric Review Technique Form ("PTRF") to support her claim  
 6 that she is moderately limited in maintaining concentration,  
 7 persistence, or pace. Tr. 525, 634. That finding should not be  
 8 confused with a residual functional capacity assessment. An  
 9 assessment of residual functional capacity involves a more  
 10 detailed, narrative assessment of a claimant's functional  
 11 abilities. SSR 96-8p, available at 1996 WL 374184, at \*4. Dr.  
 12 Underwood indicated that Plaintiff's preoccupation with pain might  
 13 limit her concentration at times. Tr. 531. However, she  
 14 concluded that Plaintiff was "able to do simple tasks, able to  
concentrate [and] attend on simple tasks, did well on mental  
status items, able to complete ADL [and] would be able to do more  
complex tasks in relatively low stress environment." Tr. 531  
 18 (emphasis added).

19 Dr. Brown affirmed Dr. Underwood's mental residual functional  
 20 capacity assessment. Tr. 624. Dr. Brown also noted Plaintiff's  
 21 acknowledgment of IV drug use in his consultation and that her  
 22 history was "confused and confusing." Tr. 636.

23 Assuming arguendo that Plaintiff's preoccupation with pain  
 24 might limit her concentration at times and that is inconsistent  
 25 with the ALJ's finding regarding residual mental functional  
 26 capacity, the ALJ's decision not to adopt additional concentration  
 27 limitations was, nonetheless, supported by substantial evidence.  
 28 The medical record overwhelmingly suggests the Plaintiff's pain

1 complaints were exaggerated and motivated by drug-seeking  
2 behavior. Tr. 514, 614. An ALJ may reject any doctor's opinion  
3 that is premised on a claimant's properly discredited subjective  
4 complaints. *Bayliss*, 427 F.3d at 1216-17; *Batson v. Comm'r of*  
5 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9<sup>th</sup> Cir. 2004).

6 The ALJ properly rejected Plaintiff's pain testimony, noting  
7 inconsistencies between the severity of Plaintiff's alleged  
8 symptoms, the objective medical record, and her daily activities.  
9 Tr. 27-29.

10 The ALJ also noted that Plaintiff exhibited a pattern of  
11 exaggeration and deception exemplified by drug-seeking behavior;  
12 for example, in seeking out narcotic pain medication, Plaintiff  
13 claimed to have herniated discs in her back. This claim is not  
14 supported by any medical evidence. Tr. 27-28, 190-192, 325-27,  
15 330-32, 336-39, 431-35, 689. Additionally, both Drs. Gilbert and  
16 Dalley observed that Plaintiff was pain and disability focused and  
17 likely exaggerated her pain symptoms. Tr. 514, 647. Plaintiff  
18 did not disclose her current use of marijuana or past use of other  
19 recreational drugs to Dr. Gilbert at the time of her exam. Tr.  
20 511. Exaggerating complaints of pain in order to receive  
21 prescription pain medication is a sufficient, clear and convincing  
22 reason to conclude that Plaintiff was not credible. *Edlund v.*  
23 *Massanari*, 253 F.3d 1152, 1157 (9<sup>th</sup> Cir. 2001). For these  
24 reasons, the court finds the ALJ's decision not to adopt  
25 additional concentration limitations related to pain was supported  
26 by substantial evidence.

27 Plaintiff also contends that Drs. Gilbert and Dalley's  
28 estimate of her GAF scores as 60 and 55 are inconsistent with the

1 ALJ's mental RFC determination. Plaintiff's Memo. at 9. See  
2 American Psychiatric Ass'n, Diagnostic & Statistical Manual of  
3 Mental Disorders 34 (4<sup>th</sup> ed. TR 2000) (DSM-IV-TR). Plaintiff  
4 argues that these GAF scores equate to an RFC assessment. In  
5 fact, GAF scores are numerical estimates reflecting a clinician's  
6 judgment of an individual's overall level of functioning; they do  
7 not necessarily reflect a person's ability to work. DSM-IV-TR at  
8 32-34.

9 Drs. Gilbert and Dalley's evaluations are consistent with the  
10 ALJ's determinations that the Plaintiff could do simple,  
11 repetitive tasks and have superficial interaction with the public.  
12 Tr. 22, 27, 510-514. Dr. Gilbert found that the Plaintiff had the  
13 ability to reason and understand. Tr. 514. He noted that she had  
14 some problems with concentration, but, nonetheless, was able to  
15 persist in tasks adequately. Tr. 514. He also noted that  
16 although her social interactions were somewhat impaired, she would  
17 not be prevented from engaging in gainful employment. Tr. 514.  
18 Dr. Dalley stated that Plaintiff "does not have a cognitive or  
19 psychological disability that would prevent her from performing in  
20 a work environment at an entry level position." Tr. 647. When  
21 evidence is subject to more than one interpretation and the ALJ's  
22 interpretation is rational, the Commissioner's decision should be  
23 affirmed. *Burch v. Barnhart*, 400 F. 3d 676, 679 (9<sup>th</sup> Cir. 2005).

24 Based on the foregoing, the court finds the ALJ properly  
25 concluded that, absent consideration of DAA, Plaintiff had no  
26 limitations on attention and concentration. Tr. 25.

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1   **B. Dr. Rodemeyer**

2       Plaintiff next contends that the ALJ erred when she did not  
 3 adopt Dr. Rodemeyer's opinion that Plaintiff was limited to  
 4 sedentary work. Plaintiff's Memo. at 10-11. In determining a  
 5 claimant's RFC, an ALJ considers all relevant medical evidence and  
 6 is responsible for resolving its ambiguities and conflicts. 20  
 7 C.F.R. § 416.927; *Batson*, 359 F.3d at 1195. An ALJ must give  
 8 specific and legitimate reasons supported by substantial evidence  
 9 to reject the opinion of a treating or examining doctor. *Bayliss*,  
 10 427 F.3d at 1216. An ALJ may satisfy this burden by summarizing  
 11 the conflicting evidence in detail and interpreting it. *Morgan*,  
 12 169 F.3d at 600; *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir.  
 13 1989). Here, the ALJ gave specific reasons for rejecting the  
 14 opinion of Dr. Rodemeyer. Tr. 28-29.

15      The ALJ noted that Dr. Rodemeyer's opinion was in the form of  
 16 a checklist, did not include supportive objective evidence, and  
 17 appeared to be based primarily on Plaintiff's subjective  
 18 complaints. Tr. 28. Opinions rendered in checklist form that are  
 19 lacking supportive evidence and are based on a claimant's  
 20 subjective complaints may be accorded less weight. *Batson*, 359  
 21 F.3d at 1195; see also *Crane v. Shalala*, 76 F.3d 251, 253 (9<sup>th</sup>  
 22 Cir. 1996). Although Dr. Rodemeyer limited Plaintiff to sedentary  
 23 work, the ALJ noted contradictions between this conclusion and the  
 24 doctor's examination findings. On examination, Dr. Rodemeyer  
 25 noted only mild abnormalities as follows: Occasional wheezing  
 26 aggravated by smoking; slight tenderness in lumbar-sacral on  
 27 palpation; not considered a surgical candidate; normal upper  
 28 extremity nerve conduction study. Tr. 28-29, 650. Contradictions

1 between a doctor's opinion of claimant's abilities and that  
2 doctor's clinical notes, observations and opinions of the  
3 claimant's capabilities "is a clear and convincing reason for not  
4 relying on the doctor's opinion[.]" *Bayliss*, 427 F.3d at 1216.

5 The ALJ also noted that the duration of Plaintiff's treating  
6 relationship with Dr. Rodemeyer was short. Tr. 29. At the time  
7 she filled out the form, Dr. Rodemeyer had been treating Plaintiff  
8 for less than one month. Tr. 652; 20 C.F.R. § 416.927(d) (2).

9 Finally, the ALJ noted that Dr. Canfield's opinion contradicted  
10 Dr. Rodemeyer's conclusions. Tr. 29. Dr. Canfield was a  
11 specialist in orthopedics and had examined Plaintiff previously in  
12 2002, making his treating relationship with Plaintiff comparable  
13 to Dr. Rodemeyer's; he noted that although Plaintiff had some disc  
14 degeneration at L5 and S2, there was nothing else that would  
15 suggest a problem with her back or neck. Tr. 689. An ALJ  
16 generally gives more weight to the opinion of a specialist about  
17 medical issues related to his area of specialty than to a  
18 generalist. 20 CFR § 416.927(d) (5). For these reasons, the  
19 undersigned finds the ALJ properly gave less weight to the opinion  
20 of Dr. Rodemeyer in determining Plaintiff's residual functional  
21 capacity.

22 **CONCLUSION**

23 Having reviewed the record and the ALJ's conclusions, this  
24 Court finds that the ALJ's decision is supported by substantial  
25 evidence and free of legal error. Based on the foregoing, the  
26 undersigned concludes that the ALJ properly determined that  
27 Plaintiff is not disabled within the meaning of the Social  
28 Security Act. Accordingly,

**IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 19**) is **DENIED**.

2. Defendant's Motion for Summary Judgment (**Ct. Rec. 22**) is  
**GRANTED**.

3. The District Court Executive is directed to enter judgment in favor of Defendant, file this Order, provide a copy to counsel for Plaintiff and Defendant, and **CLOSE** this file.

**DATED** this 30<sup>th</sup> day of January, 2008.

S/James P. Hutton

JAMES P. HUTTON

UNITED STATES MAGISTRATE JUDGE